Office-Supreme Court, U.S.
FILED
NOV 2 9 1965
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

No. 781

TENNESSEE BURLEY TOBACCO GROWERS' ASSOCIATION,
Petitioner,

vs.

COMMODITY CREDIT CORPORATION.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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To the United States Court of Appeals for the Sixth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Tennessee Burley Tobacco Growers' Association (herein called "Association"), prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Sixth Circuit (herein called "Sixth Circuit"), entered September 2, 1965, in Cases Nos. 15,899 and 15,900, styled Tennessee Burley Tobacco Growers' Association, Appellee and Cross-Appel-

lant v. Commodity Credit Corporation, Appellant and Cross-Appellee. In Case No. 15,899 the Sixth Circuit reversed a judgment entered by the United States District Court for the Eastern District of Tennessee, Northeastern Division (herein called "District Court"), against Commodity Credit Corporation (herein called "Commodity") in the amount of $173,121.16. In Case No. 15,900 the Sixth Circuit affirmed the action of the District Court in refusing to award the Association an additional sum of $48,704.32.

Certified appendices record in said cases, with the proceedings in the Sixth Circuit, is furnished herewith in accordance with this Court's Rules.

OPINION BELOW.

The Sixth Circuit's opinion appears in Appendix A to this Petition (pp. A. 1a-22a), and in the certified appendices record. The opinion is reported at 350 F. 2d 35.

The District Court's opinion, judgment and supplemental order appear in Appendix A to this Petition at pp. A. 22a-38a, 38a, 39a, and in the certified appendices record at pp. 271a-288a, 288a and 289a.[1] Although the District Court's opinion was marked for publication, it has not been officially or unofficially reported.

JURISDICTION.

The judgments of the Sixth Circuit, for which complaint is herein made, were dated and entered September 2, 1965. This Court's jurisdiction is invoked under 28 U. S. C., Secs. 1254 (1) and 2101 (c).

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[1] Page references preceded by the symbols "A" or "B" are to the respective Appendices to this Petition, and page references without such symbols "A" or "B" are to the certified Appendices Record filed in this Court's Clerk's office under Rule 21.

BASIS FOR FEDERAL JURISDICTION IN THE DISTRICT COURT.

Jurisdiction of the District Court was invoked under 15 U. S. C., Sec. 714b (c) and was not disputed in either the District Court or the Sixth Circuit.

QUESTIONS PRESENTED.

1. Does the Agricultural Adjustment Act of 1949 (7 U. S. C. 1421 et seq.) require Commodity to reimburse a tobacco growers' cooperative for unrecouped overhead expenses incurred by the cooperative in administering for Commodity the tobacco price support program?

2. Was there a contract, either express or implied in fact, between Commodity and the Association which provided that the Association could recoup, either from proceeds from the sale of loan tobacco or from Commodity, expenses incurred by the Association in furtherance of the tobacco price support program?

3. Does the rule of agency law, which implies a promise by a principal to reimburse its agent for necessary expenses, obligate Commodity to reimburse the Association for overhead expenses incurred in furtherance of the tobacco price support program?

4. Do Commodity's standard tobacco loan agreements require a tobacco growers' cooperative to use its own funds, derived from consignment fees (referred to as loose floor income), to defray overhead expenses incurred by the cooperative in furtherance of the tobacco price support program?

STATUTES INVOLVED.

The statutory provisions involved are: 7 U. S. C. 1421 (a), 1425, 1428 (c) and 1441 (Agricultural Adjustment Act of 1949); 15 U. S. C. 714b (c), (g) and (m), and 714j (Commodity Credit Corporation Act); 28 U. S. C. 1346 (a) (2) (Tucker Act); March 2, 1919, C. 94, 40 Stat. 1272 (Dent Act); and Tennessee Code Annotated 43-1803 (Tennessee Cooperative Marketing Associations). These statutory provisions are set forth in Appendix B hereto.

STATEMENT OF THE CASE.

The Association sued Commodity for reimbursement of overhead expenses incurred by the Association in connection with the tobacco price support program (pp. 5a-8a). After trial without a jury, the District Court entered judgment in favor of the Association for $173,121.16 (p. 289a).

Thereafter Commodity appealed to the Sixth Circuit seeking a reversal of the judgment entered by the District Court and the Association filed a cross appeal asking the Sixth Circuit to increase the award by an additional $48,704.32 which had been disallowed by the District Court.

The Sixth Circuit reversed the judgment of the District Court against Commodity and dismissed the action. With respect to the cross appeal, the Sixth Circuit affirmed the judgment of the District Court.

STATEMENT OF FACTS.

The Association is a farmers' cooperative marketing association incorporated and existing under the Cooperative Marketing Laws of Tennessee (Sections 43-1801 to 43-1849, Tennessee Code Annotated) and has approx-

imately 70,000 grower members in Tennessee and North Carolina (p. 136a). Commodity had contracted with the Association to carry out the tobacco price support program in the burley markets in Tennessee for the crop years 1946 to 1955, inclusive, excepting 1953 (pp. 34a-49a, 119a, 122a, 273a).

Price support is made available by Commodity to growers of eligible tobacco through grower associations on the basis of official standard grades at a specified rate for each grade. The price support is accomplished by Commodity making loans to producer associations.

For each of the years involved Commodity and the Association entered into separate contracts in writing, referred to as "loan agreements".[2] Payment to growers of the support price under and through the loan agreements was accomplished in this manner: Burley tobacco is sold at auction in commercial warehouses. Tobacco growers bring their tobacco to an auction warehouse of their choice, and prior to sale it is graded by government graders. There, at previously established sales hours, buyers for the commercial tobacco companies bid on the tobacco. If the highest bid price on a lot or basket of tobacco is not more than one point above the support price established by the Department of Agriculture for that particular grade of tobacco then the tobacco is taken out of the regular commercial channels, the auction warehouseman pays the grower the established support price, the Association reimburses the warehouseman with funds borrowed from Commodity, the tobacco is pledged as collateral for the loan, and the Association then takes over the handling of the tobacco, arranging for it to be transported, redried, packed, stored, regraded when ap-

[2] In the burley tobacco area in which the Association operated, a crop year extends from December 1 through November 30. Thus the 1951 crop year was from December 1, 1951 through November 30, 1952 (p. 119a-120a).

propriate, and seeing to the sale thereof (pp. 122a-125a). The tobacco is sold in accordance with sales policies and prices established by Commodity and the proceeds of sale applied to repayment of the loan (pp. 126a-127a).

Generally, a tobacco crop is several years in liquidation. By regrading, through the aging process, and by reason of fluctuations in the market price tobacco generally will bring a better price at a later date (pp. 128a-129a). In the several years prior to 1951 during which Commodity contracted with the Association to administer the tobacco price support program, the crops had liquidated for a sum sufficient to repay the loans in full, with interest, and to cover all overhead expenses incurred by the Association in the handling and disposition of the crops (pp. 277a-279a). In one or more years prior to 1951 a profit or "net gains" had been realized and these were allocated to the growers in a proportionate manner, part of the net gains having been distributed in cash, the remainder having been allocated to the growers by name on the books of the Association and retained as an operating reserve (pp. 136a-137a).

The expenses incurred by the Association in the handling of these crops were of two kinds—"direct expenses" (that is, advances to growers, transportation, redrying, storage, etc.) and "indirect" or "overhead expenses" (various office, sales, etc. expenses) (pp. 125a-126a).

Under the contracts between Commodity and the Association, the latter was authorized to borrow from Commodity all direct expenses (p. 274a). As to overhead expenses, the contracts authorized the Association to deduct from the amounts paid to tobacco growers 12¢ per hundred-weight to be used in payment of overhead expenses (p. 35a). The contracts also authorized the Association to borrow additional sums for overhead expenses from Commodity if the Association chose to submit budgets

for such expenses, and it could borrow such expenses up to the amounts of budgets submitted and approved (pp. 43a, 242a-243a, 8b).

The amount in controversy in this action is for expenditures by the Association in connection with the handling of the 1951, 1952, 1954 and 1955 crops. Such expenditures involved amounts spent in excess of the 12¢ per hundred-weight and in excess of the amounts borrowed from Commodity. In all years that Commodity contracted with the Association, the latter, with the knowledge and acquiescence of Commodity, used funds in its treasury to pay a part of the overhead expenses (pp. 135a, 139a, 147a, 231a, 106b). The funds so used were those of tobacco growers—principally membership fees and profits or "net gains" realized from successful liquidation of prior crops which had been allocated on the books and records to the individual growers but which had been retained in the treasury of the Association as reserves (pp. 256a, 97b). By using these grower-member funds for these purposes, the interest expense of the Association to Commodity was reduced (p. 146a).

In handling the crops for the years 1946 to 1950, inclusive, the Association had expended more than it had borrowed for overhead expenses and these amounts were recouped upon the final sale or liquidation of the tobacco which went under loan in those crop years. In handling the 1951, 1952, 1954 and 1955 crops, the Association also expended more than it borrowed for overhead expenses, but such amounts were not recouped and are the subject of this litigation. In May, 1957, Commodity directed the Association to remit the gross proceeds from the sales of tobacco and the Association remitted such amounts (pp. 16a, 281a). In 1958 Commodity called the loan balances due on the 1951, 1952, 1954 and 1955 crops (pp. 105a, 281a). The Association could not pay and Commodity replevied the collateral, which consisted of some

15 million pounds of tobacco remaining on hand from these four crops (pp. 16a, 281a). Upon the sale of the crops by Commodity there was sufficient money to pay the principal sums of the loans but there was a deficiency of $1,207,273.59 in the total indebtedness, including interest (p. 117a). This deficiency was absorbed by Commodity as required by 7 U. S. C. 1425.

Briefly, it is the contention of Commodity that it is not obligated to reimburse the Association for overhead expenses incurred by the Association in excess of the amounts established by budgets approved by Commodity; that all amounts approved by Commodity to be loaned were, in fact, loaned. On the other hand, it is the contention of the Association, in brief, that by virtue of the mandate of the Agricultural Adjustment Act of 1949 Commodity was required to bear the overhead expenses involved herein, that under the loan agreements and the plan of operation, or pursuant to a promise implied in law, the Association was authorized to expend sums in addition to those borrowed, was entitled to recover said sums from the proceeds realized from the sale of the crops, and if the liquidation did not yield sufficient sums from which it could recoup these expenses it was entitled to be reimbursed by Commodity.

The District Court found, and it is not disputed by Commodity on appeal, that the sums in controversy were actually expended by the Association in furtherance of the tobacco price support program (pp. 282a-283a). As stated, Commodity did not contract with the Association for the crop year 1953 or for any crop year subsequent to 1955. Nevertheless, the 1951, 1952, 1954 and 1955 crops, or a portion thereof, were on hand for a number of years as sales efforts were being made in accordance with sales policies and price schedules established by Commodity, and a substantial portion of the sum in controversy is for expenses that were incurred during those

periods when the Association had the responsibility for the care and sale of the tobacco but had no contracts with Commodity and hence submitted no budget requests (pp. 196a-197a, 238a, 27b).

DECISION OF THE COURT OF APPEALS.

The Sixth Circuit's holdings in reference to the four issues material to this petition were as follows:

(1) It held that a tobacco growers' cooperative has no protection under 7 U. S. C. 1425 because such cooperative is not a "producer" within the meaning of that section.

(2) It construed Commodity's standard tobacco loan agreements to mean that Commodity is liable for only overhead expenses of the Association which were "approved in advance and included in loan payments".

(3) It held that in view of this construction of the agreements it was not necessary to pass upon the question of whether an implied promise obligated Commodity to reimburse the Association for the overhead expenses incurred in the tobacco price support program.

(4) It construed the agreements to mean that the Association could not recoup overhead expenses in the amount of $48,704.32 which had been paid by the Association out of funds owned by the Association and received from consignment fees.

REASONS FOR GRANTING THE WRIT.

QUESTION ONE.

The sweeping decision of the Sixth Circuit in holding that 7 U. S. C. 1425 gives no protection to a tobacco growers' cooperative makes that section inoperative in the tobacco price support program.

Under 7 U. S. C. 1421 (a), 1428 (c) and 1441, price support is mandatory for tobacco. 15 U. S. C. 714j authorizes Commodity, in the conduct of its business, to utilize producer-owned cooperatives. Since 1946, as reflected by Commodity's 1955 Tobacco Loan Docket, Commodity has carried out the tobacco price support program through these grower cooperatives. The reasons therefor are reflected in such Docket as follows:

> "The program will be carried out through grower associations, as the experience acquired in executing the 1946 through 1954 programs has demonstrated that this is an effective and reasonably satifactory method of supporting the price of eligible tobacco. Growers, acting individually, cannot on a practical basis arrange to have their tobacco processed, packed in hogsheads, or cases, and stored, so as to put it in acceptable condition as collateral for loan" (p. 54a).

Since Commodity makes no loans to the individual tobacco growers and if, as the Sixth Circuit held, a growers' cooperative is not a producer within the meaning of 7 U. S. C. 1425, then such section gives absolutely no protection in the price support program in the tobacco industry. That Congress did not intend such a result can be seen from the legislative history of the Agricultural Act of 1949 in which 7 U. S. C. 1425 was enacted. As noted above, for at least three years before enactment of the 1949 Act Commodity had administered the tobacco price support program by loans to cooperatives and not by loans to individual growers. The recommendation of the Committee on Agriculture and Forestry for the passage of the 1949 Act contained the following:

> "S. 2522 provides that all price support shall be made available to cooperators through the present system of loans, purchases, and other operations" (Vol. 2, U. S. Code Congressional Service, 1949, p. 2410).

Thus Congress, in making no change in the existing system of providing loans to cooperatives, must have intended 7 U. S. C. 1425 to protect the growers by protecting their cooperatives.

The Sixth Circuit reasoned that since each grower had received "the full 90% of parity price for his tobacco" there was no necessity for any protection which Congress provided in 7 U. S. C. 1425. However, while the farmer on the one hand was receiving 90% of parity price for his tobacco, nevertheless on the other hand he was being forced to give back to the tobacco price support program money with which to bear a portion of the overhead expenses of the program. Under the Cooperative Marketing Law of Tennessee[3] the Association was not organized to make a profit for itself and could not under such law but was organized to make profit for its members—the tobacco growers. Consequently, it was the growers' moneys which were used to bear the overhead expenses involved in this litigation. Congress certainly did not intend Commodity on the one hand to pay 90% of parity price to the farmer and with the other hand take back some of his money with which to bear a part of the costs of the price support program.

Commodity, in effect, concedes that a cooperative is "a producer" for certain purposes but not for others. It argues that the deficiency which Congress intended the Government to bear under 7 U. S. C. 1425 was the deficiency between the proceeds from the sale of tobacco and the amount of the loan made to the cooperative (193a, 284a). To conclude that the Government is responsible under 7 U. S. C. 1425 for the deficiency between the sales proceeds and the amount of the loan made to such cooperative must mean that the cooperative is "a producer"

[3] Section 43-1803 TCA, which is set forth at p. B. 43a of this Petition.

within that section. Thus, even Commodity's position relative to this statutory provision runs counter to the holding of the Sixth Circuit.

It is the Association's position that 7 U. S. C. 1425 does not limit the Government's liability to the deficiency between the proceeds from the sale of tobacco and the amount of the loan. The statute does not say that no producer shall be liable for a deficiency in a loan, but says that "no producer shall be personally liable for **any** deficiency arising from the **sale of the collateral** securing any loan". Furthermore, Commodity's Board of Directors recognized that the operating costs of the loan program would be borne by Commodity if the tobacco was not sold for enough to pay the loan and costs. In its Docket the Board said "the entire amount of the operating cost ultimately will be borne by producers, if the tobacco is sold for enough to repay the loan **and costs**" (p. 278a). As the District Court said:

> "To say that this statute contemplated deficiencies resulting only from sales of collateral for the loans is to impute to the Congress a narrow absolution inconsistent with the remedial recovery program it instituted" (p. 284a) (p. A. 34a).

Since the protection of 7 U. S. C. 1425 is of vital importance to tobacco growers and since, in view of the method by which the tobacco price support program is administered, the Sixth Circuit's opinion eliminates any protection to the grower which Congress intended by that section, we respectfully submit that this Court should review the holding of the Sixth Circuit.

QUESTION TWO.

The Sixth Circuit construed the agreements between Commodity and the Association to mean that Commodity was not liable for any overhead expenses incurred by the

Association in administering the price support program except those approved in advance by Commodity and included in loan advances. However, the Sixth Circuit did not point to any specific language in the contracts which expressly so provided. Apparently the Sixth Circuit reached this conclusion because it felt that to hold otherwise would mean that Commodity had no control over overhead expenditures made by the Association. If the Association were seeking in this litigation expenses incurred in other than furtherance of the price support program, then such argument of Commodity's lack of control might have merit. However, at the trial in the District Court, Commodity's counsel conceded that the sum sued for was spent in furtherance of the price support program (pp. 198a-199a) and, with the exception of one witness, all of the Government officials who testified conceded that the Association's disbursements involved in this action were related to the administration of such program (p. 282a).[4]

Furthermore, we respectfully insist that the express language of the tobacco loan agreements negates the conclusion of the Sixth Circuit that Commodity was not liable for any overhead expenses except those included in loan payments. Paragraph 11 (a) of the 1951 Agreement and paragraph 12 (a) of the Agreements for the other three years provided that upon any sale of loan tobacco by the Association it would remit to Commodity for application on the loan the net proceeds from such sale "i. e., the gross proceeds, less accrued charges with respect to such tobacco which have been approved by Commodity **but for which no amount has been loaned by Commodity to the Association**" (p. 7b). (Emphasis supplied.)

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[4] In addition, after the Association had made its claim for these expenses and before suit was instituted, the Department of Agriculture performed a detailed audit of such expenses and verified them as having been expended for overhead purposes. The Department auditors developed that the Association's claim at that time was understated by $1,599.44 (pp. 22b-37b).

We submit that the determination of whether Commodity has expressly through these agreements eliminated the tobacco growers' rights to recoup overhead expenses concededly spent in the price support program, is vital and important not only to the 70,000 tobacco farmers who are members of this Association, but also to all tobacco growers since their price support programs are likewise administered through agreements between Commodity and growers' cooperatives.

QUESTION THREE.

Since the Sixth Circuit held that the agreements between the parties mean that the Association could not recover the overhead expenses involved herein, the Sixth Circuit did not pass upon the question of whether or not agency law implies a promise by Commodity, the principal, to reimburse the Association, its agent, for expenses incurred in administering the price support program. The Sixth Circuit stated that such agency rule was applicable only "in the absence of terms to the contrary in the agreement" (p. A. 16a). We respectfully insist that there were no terms to the contrary in the agreements. The District Court stated that he could find no specific provision in the agreements on this particular subject.[5] As noted above, if the agreements indicated anything on this subject they indicated that the Association was entitled to recoup the overhead expenses sued for herein. However, if, as we insist, the District Court was correct in holding that the agreements contained no provisions on the subject, then the law of agency implies a promise by

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[5] The District Court stated: "In so far as the Court can ascertain, however, there was no specific agreement between the parties as to which would bear any loss arising from the administration of the support program if the collateral was not resold for a sufficient amount to bear all such expenses" (p. 275a).

Commodity to reimburse the Association for the overhead expenses involved herein.

That rule is applicable if (1) the relationship between Commodity and the Association was that of principal-agent, and (2) the Association either (a) suffered a loss which "it is fair that the principal should bear", or (b) made payments "upon obligations arising from the possession or ownership of things which [it was] authorized to hold on account of the principal." Restatement, Agency 2d, Sections 438 (2) (b) and 439 (b).

The District Court held that the Association was the agent of Commodity (pp. 273a and 285a). The fact that the relationship between Commodity and the Association was that of principal and agent has also previously been adjudicated in other actions. **Neas v. Tennessee Burley Tobacco Growers' Association,** 204 Tenn. 405, 321 S. W. 2d 802, and **Range v. Tennessee Burley Tobacco Growers' Association,** 41 Tenn. App. 667, 298 S. W. 2d 545, Cert. Den. 355 U. S. 813, 2 L. Ed. 30.[6] Commodity was not a party in these cases but they are *stare decisis.* In addition, however, in a bankruptcy proceeding involving the Association, Commodity was a party by filing a petition for specific performance of certain loan agreements (p. 38b).[7] The Referee in Bankruptcy likewise held that the relationship between those two parties was that of principal

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[6] In the **Range** case the Tennessee Court said at page 687: "The contracts of the Association with Commodity Credit Corporation created the relationship of principal and agent between them . . .", and in the **Neas** case the Court said at page 411: "The adjudication in the Range case is that the tobacco growers involved were entitled to a distribution pro rata in cash of these profits, and that it is the duty of the Association, the agent of Commodity Credit, to so distribute these profits. This adjudication is *stare decisis.*"

[7] In the bankruptcy proceeding Commodity asserted that the **Range** and **Neas** cases were *res judicata* as to these parties, but in this litigation Commodity asserts they are not *res judicata* (pp. 43b-44b).

and agent (pp. 43b-44b). Such holding by the Referee is *res judicata* in this case. See **Davis v. McKinnon & Mooney**, 266 F. 2d 870.

Since the relationship between the parties was that of principal and agent, the law implies a promise by Commodity to reimburse the Association for the expenses involved herein because it is fair and equitable for Commodity to bear such expenses. Restatement, Agency 2d, Section 438 (2) (b). When Commodity sold the tobacco which it replevied from the Association, and which was the collateral for the loans made to the Association, Commodity recouped every dollar of the principal amount of its loans to the Association and, in addition, recovered approximately $1,000,000.00 in interest on that principal. Furthermore, the Association, by using its own funds for the overhead expenses involved herein, saved Commodity the use of the moneys which the Association would otherwise have borrowed from Commodity. Yet the Sixth Circuit holds that the individual farmers must bear such expenses which were incurred in furtherance of the tobacco price support program rather than have Commodity bear them.

Commodity is also obligated under the rule of agency law to reimburse the Association for the expenses involved herein because the payments were made by the Association "upon obligations arising from the possession . . . of things which [it was] authorized to hold on account of the principal" (Commodity). Restatement, Agency 2d, Section 439 (b). The loan agreements required the Association to look after the tobacco which was the collateral for the loans, see that the warehousemen who purchased the tobacco from the growers were paid the support price, and then handle the transporting, insuring, redrying, recording, regrading, fumigating, packing, sampling, inspecting, storing and selling of the tobacco (p. 274a). Hence, the overhead expenses incurred

by the Association and involved in this litigation arose from the possession of the tobacco which it was "authorized to hold on account of the principal."[8]

Commodity asserted in this litigation that the implied contract rule of agency law was inapplicable against the Government and cited cases construing the Tucker Act (28 U. S. C. 1346) and the Dent Act (March 2, 1919, C. 94, 40 Stat. 1272). Those Acts, however, limited suits against the Government to those founded on "express or implied" contracts or agreements. The Commodity Credit Act, 7 U. S. C. 714b (c), contains no such limitations but provides that Commodity "may sue and be sued," excepting certain extraordinary relief such as attachment, injunction, garnishment and other similar process. As this Court has repeatedly held, when Congress endows a governmental agency with power to sue and be sued, that agency is amenable to judicial process the same as any private enterprise. **Keifer & Keifer v. Reconstruction Fi-**

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[8] While this principle is applicable to the Association's entire claim for overhead expenses borne by it, nevertheless this rule has particular applicability in reference to the overhead expenses borne by the Association during the crop years 1953, 1956 and 1957. During those three crop years the Association had no Loan Agreement with Commodity. Yet during the crop years 1953 and 1956 and during a portion of the crop year 1957 (until Commodity replevied the tobacco) the Association, with the consent and permission of Commodity, held for Commodity tobacco subject to loans made for the 1951, 1952, 1954 and 1955 crops and thus incurred overhead expenses during 1953, 1956 and 1957 in administering the tobacco price support program. Overhead expenses for the crop year 1953, in excess of those allocated to an earlier crop, and for the crop year 1956 and a portion of the crop year 1957 (until the tobacco was replevied) were:

1953	$ 54,215.89
1956	40,157.87
1957	15,767.95
or a total of (p. 35b).	$110,141.95

Such overhead expenses are included as a part of the Association's claim in this action.

nance Corporation, 306 U. S. 381, 83 L. Ed. 784; **Federal Housing Administration v. Burr**, 309 U. S. 242, 94 L. Ed. 724. See also **United States v. Edgerton & Sons, Inc.**, 178 F. 2d 763 (1949). In addition, 7 U. S. C. 714b (g) gives Commodity the power to enter into contracts and agreements, and 7 U. S. C. 714b (m) grants Commodity "all such incidental powers as are customary in corporations generally" (p. B. 42a).

We respectfully submit that it is of vital importance to all tobacco growers' cooperatives administering the price support program for this Court to review whether or not Commodity is obligated under an implied promise to reimburse its agents, the cooperatives, for expenses incurred in furtherance of the tobacco price support program.

QUESTION FOUR.

The Sixth Circuit, on the cross appeal by the Association, held that the Association is not entitled to recoup the portion of overhead expenses incurred in furtherance of the price support program which were paid by the Association from funds derived from its loose floor income. This decision runs counter to a decision which is *res judicata* beween the parties. In the bankruptcy proceeding, upon a petition filed by Commodity, the Referee held that Commodity and the Association intended for the Association to recoup the overhead expenses which it had "temporarily borne out of its own funds".[9] No appeal was taken by Commodity from that holding of the Referee (p. 17a). Consequently, this question has been resolved and Commodity is obligated under that holding to reimburse the Association for the funds temporarily used by the Association.

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[9] The Referee said: "The intent of the parties was that the Bankrupt would recoup such overhead expenses which it had temporarily borne out of its own funds" (p. 48b).

While the Association recognizes that Question Four involves matters only between Commodity and the Association, nevertheless if this Court grants the petition to review the first three questions set forth above, it respectfully requests this Court to review Question Four also because of its importance to the 70,000 tobacco growers who are members of the Association and whose rights are involved herein.

CONCLUSION.

Petitioner prays that this petition for writ of certiorari be granted and that a writ of certiorari issue to review the decision and judgment of the Sixth Circuit entered in Cases Nos. 15,899 and 15,900.

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